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PROJECT NO. 51830

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REVIEW OF CERTAIN RETAIL § PUBLIC UTILITY COMMISSION  
ELECTRIC CUSTOMER §  
PROTECTION RULES § OF TEXAS

**STEERING COMMITTEE OF CITIES SERVED BY ONCOR'S COMMENTS  
REGARDING PROJECT NO. 51830, REVIEW OF CERTAIN RETAIL ELECTRIC  
CUSTOMER PROTECTION RULES**

The Steering Committee of Cities Served by Oncor (OCSC) submits these Comments to the Public Utility Commission of Texas (Commission) regarding Project No. 51830, *Review of Certain Retail Electric Customer Protection Rules*. On June 25, 2021, the Commission filed a strawman rule proposing to amend 16 Texas Administrative Code (TAC) §§ 25.471, 25.475, and 25.479. The Commission sought comments on the following topics:

- The strawman rule proposed, in part, to implement House Bill (HB) 16, relating to the regulation of certain retail electric products, and section 9 of Senate Bill (SB) 3, relating to preparing for, preventing, and responding to weather emergencies and power outages; and increasing the amount of administrative and civil penalties, as adopted by the 87th Texas Legislature (Strawman Comments);
- Public Utility Regulatory Act § 39.110, as adopted by the 87th Texas Legislature in HB 16, which provides that “[a]n aggregator, a broker, or a retail electric provider may not offer a wholesale indexed product to a residential or small commercial customer” (Wholesale Index Product Comments); and
- Whether the Commission should remove the Real-Time Settlement Point Price (RTSPP) from the Provider of Last Resort (POLR) rate formulas found in 16 TAC § 25.43 (POLR Rate Formula Comments). With respect to this issue, the Commission specifically asked:
  - If the Commission removes the RTSPP from the POLR rate formulas, what would be an equitable approach to POLR pricing moving forward?
  - What other considerations should the Commission take into account in determining whether and how to remove RTSPP from the POLR rate formulas (e.g. the role the POLR rate plays in § 25.498, related to prepaid service, etc.)?

The Commission requested comments from interested parties be filed by July 6, 2021. Therefore, these Comments are timely filed.

## **I. COMMENTS**

OCSC's interest in the matters at issue in this Project arise from its dual role as both electric customers in their own right, procuring power in the deregulated retail market for crucial public functions such as fire, police, and water service, and as advocates on behalf of the retail customers who reside or do business within their corporate limits. Winter Storm Uri represented one of the most significant challenges to the ERCOT market since the market opened, and put tremendous strain on the ability of municipalities and other political subdivisions to provide for public health, safety, and welfare. Cities provide essential first-responder services and critical public services that were hampered, and even incapacitated, by the power outages resulting from Winter Storm Uri. As a result, OCSC's concerns and experiences during Winter Storm Uri prompt its support for the establishment of additional regulations related to certain retail electric products and preparing for, preventing, and responding to weather emergencies and power outages. Physical and financial risks will always be borne in part by customers. Where customers must bear such risks, those risks should be calibrated for type and sophistication of each customer or customer group. Where customers must face risks, transparency provides information that allows customers to understand and attempt to manage those risks. OCSC believes the Commission's proposed strawman offers enhanced transparency and customer protection measures critical to its members, and OCSC looks forward to participating in the development of these rules implementing HB 16 and section 9 of SB 3.

### **A. Executive Summary**

OCSC asserts the following main points throughout these Comments:

- OCSC supports the Commission's proposed rule amendments and believes the changes offer enhanced customer protection measures to implement HB 16 and section 9 of SB 3.
- Increased transparency and communication to customers regarding ancillary services, contracting terms and expiration dates, load shedding processes, and critical load and critical care customers are essential. OCSC supports these measures.

- Clarification is needed to reconcile one inconsistency between 16 TAC § 25.475(c)(3)(E) and 16 TAC § 25.475(e)(2)(D) regarding the provision of notice of the expiration of a contract.
- OCSC supports the Commission’s implementation of HB 16, restricting wholesale indexed products from residential and small commercial customers, and increasing the transparency of these products and other indexed products to other classes of customers.
- OCSC recommends the Commission refer to the definition of “small commercial customer” found in 16 TAC § 25.471(d)(11) in its rule amendments to 16 TAC § 25.475.
- OCSC believes POLR customers should be protected from extraordinary charges by setting POLR pricing closer to a fixed, known charge, and offers one potential solution.

## **B. Strawman Comments**

OCSC strongly supports the proposed rule changes to 16 TAC §§ 25.471, 25.475, and 25.479 and believes the additional regulations will offer enhanced customer protection to customers of all types and sizes across the state. OCSC supports the rule amendments that broaden the scope of requirements applicable to the provision of service and marketing to large commercial and industrial customers. Although large commercial and industrial customers are oftentimes more sophisticated in contracting abilities than residential and small commercial customers, Winter Storm Uri proved that no retail electric customer was immune from harm, both physical and financial, and increased transparency in marketing and contracting terms will benefit all customers.

OCSC also supports the inclusion of ancillary service charges in the definitions of “fixed rate product” and “price” in 16 TAC § 25.475(b)(5), (8), and in the new Acknowledgement of Risk (AOR) provision found in 16 TAC § 25.475(j). Ancillary service charges passed through to customers was a highly contentious topic following the February event and OCSC believes more information and transparency about ancillary service charges should be communicated to customers in the future. OCSC supports the requirement that a customer must sign an AOR prior to entering into a contract for a product that contains a direct pass-through of ancillary service

charges. Customers must have an assurance of transparency to provide the confidence that they have the opportunity to fully understand and appreciate the financial risks associated with the pass-through of ancillary service charges before entering into a contract for that type of product.

Within the specific contract requirements provision, OCSC supports the additions of subsections (D) and (E), related to default renewal products. As evidenced in the aftermath of Winter Storm Uri, customers were unaware and unfamiliar with the terms of their retail energy product contracts. If a fixed rate product had expired unbeknownst to the customer, they were placed on a variable rate contract and incurred extremely high energy costs for the dates during Winter Storm Uri. Increased transparency and customer protection measures are needed to ensure retail electric customers are not unknowingly financially burdened during weather emergencies. OCSC supports the concept of including in the contract the terms of the default renewal product that the customer will be automatically enrolled in if they do not select another product before the expiration of the contract term. OCSC also supports requiring default renewal products to be fixed rate products in the circumstances where the retail electric provider (REP) does not provide notice of the expiration of the contract and the customer does not select another REP before expiration of the contract term. The provision requiring additional notice for the expiration of fixed rate products is also critical in giving customers as much notice as possible so that they are aware of the terms of their contract and know when it has expired.

OCSC would point out one inconsistency between 16 TAC § 25.475(c)(3)(E) and 16 TAC § 25.475(e)(2)(D) regarding the provision of notice of the expiration of a contract. Under 16 TAC § 25.475(c)(3)(E) (related to Specific contract requirements), the REP must continue to serve the customer under the pricing terms of the fixed rate product until the REP provides expiration notice *or* the customer selects another retail electric product. Under this provision, once the REP provides expiration notice, the REP no longer has an obligation to serve the customer under the pricing terms of the fixed rate product. However, under 16 TAC § 25.475(e)(2)(D) (related to the Notice Timeline for Expiration of a Fixed Rate Product), the REP must continue serving the customer under the terms of the fixed rate contract until sufficient expiration notice is provided *and* the customer selects another retail electric product. Under this provision, even once the REP provides sufficient expiration notice, the REP still must serve the customer under the terms of the fixed rate contract until the customer selects another retail electric product. OCSC believes clarification is required to reconcile these two sections.

OCSC supports modifications to the “Your Rights as a Customer” document (YRAC). The implementation of load shedding was a heavily misunderstood topic in the aftermath of Winter Storm Uri. Increased transparency around the procedures that transmission and distribution utilities (TDUs) follow regarding involuntary load shedding initiated by the Electric Reliability Council of Texas (ERCOT) would be hugely helpful to OCSC members and all retail electric customers in the state in evaluating their own advanced preparations for the event of a future grid emergency. OCSC also appreciates the dissemination of this information in public service notices to customers under 16 TAC §§ 25.479(d)(1)(A).

OCSC also strongly supports the additional notice requirements in 16 TAC §§ 25.479(d)(1) (related to Public service notices). This new provision requires REPs to provide customers with certain information in April and October each year, ahead of summer and winter when many weather emergencies can occur. OCSC believes dissemination of information at these times is critical and timely and will assist in weather emergency preparedness for its members. In addition to information related to involuntary load shedding, which is beneficial, the REP must also provide information about the types of customers who may be considered critical care and critical load, and information about the procedures for customers to apply to be considered critical care and critical load. During Winter Storm Uri, many of OCSC’s members struggled to determine which of their facilities were identified as critical load with their electric provider. Facilities in cities throughout Texas that met the definition and standard of “critical load” may not have been properly identified and labeled as critical load with their electric provider, and thus, lost power during key moments of the February event, with disastrous effects. OCSC has been working to identify such critical load in the aftermath of Winter Storm Uri due to the hard lessons learned, and appreciates that REPs will now be required to provide customers with more information related to the designation of their facilities as critical load. In addition, OCSC members can better help the citizens of their communities prepare for weather emergencies by knowing and understanding the procedures for residential customers to apply to be considered critical care customers.

### **C. Wholesale Indexed Product Comments**

Under § 39.110 of the Public Utility Regulatory Act, as adopted by the 87th Texas Legislature in HB 16, “[a]n aggregator, a broker, or a retail electric provider may not offer a

wholesale indexed product to a residential or small commercial customer.”<sup>1</sup> Wholesale indexed product is defined as “a retail electric product in which the price a customer pays for electricity includes a direct pass-through of real-time settlement point prices determined by [ERCOT].” OCSC recognizes that for certain sophisticated customers able to understand and manage wholesale pricing risk, such products may be appropriate and even beneficial to the overall market. And while typically in favor of customer choice, OCSC is aware of the enormous financial impacts that both residential and small commercial customers suffered in the aftermath of Winter Storm Uri when those customers held contracts for wholesale indexed products. OCSC supports the Commission’s proposed rule amendments implementing the requirements of HB 16, and is in favor of the AOR provision, requiring customers other than a residential or small commercial customer to sign an AOR prior to enrolling in a contract for a wholesale indexed product to ensure that larger, seemingly sophisticated customers fully understand and appreciate the financial risks associated with indexed plans.

#### **D. POLR Rate Formula Comments**

With regard to POLR rate formulas and whether the Commission should remove the RTSPP, the Commission specifically asked: (1) If the Commission removes the RTSPP from the POLR rate formulas, what would be an equitable approach to POLR pricing moving forward?; and (2) What other considerations should the Commission take into account in determining whether and how to remove RTSPP from the POLR rate formulas (e.g. the role the POLR rate plays in § 25.498, related to prepaid service, etc.)?

OCSC acknowledges one aspect of the POLR rate formula charged by Large Service Providers (LSPs). LSPs must follow an explicit pricing formula found in the Commission’s rules. One component of the pricing formula is the LSP Energy Charge. That is defined as the average over the hours serviced by the POLR of the RTSPP for the customer’s Load Zone times 125 percent (i.e., the energy charge component of the POLR rate formula charged by LSPs is a variable charge tied to the ERCOT wholesale market). As we learned from Winter Storm Uri, during

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<sup>1</sup> OCSC notes that multiple definitions of “small commercial customer” exist in the Commission’s rules. OCSC asks that the Commission reference a specific definition applicable to these sections. OCSC recommends using the definition of “small commercial customer” found in 16 TAC § 25.471: “A non-residential customer that has a peak demand of less than 50 kilowatts during any 12-month period, unless the customer's load is part of an aggregation program whose peak demand is in excess of 50 kilowatts during the same 12- month period.”

conditions of scarcity, tying that rate to the wholesale market can lead to unexpected, extraordinary bills for POLR customers, who may be on the POLR rate through no action of their own. POLR customers should be protected from such extraordinary charges by setting POLR pricing closer to a fixed, known charge.

OCSC believes that an equitable approach to POLR pricing moving forward would be for the Commission to establish a periodic POLR rate for a specific price (i.e., to actually set the rate at a specific cents per kWh) on a periodic basis (for example, quarterly), and allow POLRs to seek additional, uplifted recovery upon a showing at the Commission, should that price prove to be insufficient due to price spikes or other unusual events during the period. Such an approach would remove the volatility from the POLR rate formula that events like Winter Storm Uri can produce, while allowing REPs to be made whole for their provision of POLR service in the event of extraordinary wholesale market conditions. OCSC feels strongly that POLR customers should be protected from the most extreme pricing risks through a continual process of Commission pricing review and updates. OCSC believes that such an approach would be equitable to both REPs and to retail customers, but acknowledges that this approach would require additional details about the process to be developed.

## **II. CONCLUSION**

As stated above, OCSC, as both electric customers and as advocates on behalf of retail customers who reside or do business within the corporate limits of cities across the state, is interested in enhancing customer protection and the transparency of the electric industry in hopes to be better prepared for the next weather emergency facing Texas. In implementing the new legislative agenda, the Commission should remain focused on how to best protect customers. One original purpose of the adoption of the competitive market in ERCOT was to shift financial risks from ratepayers to market participants. OCSC is therefore in support of new regulations that protect customers from unknown financial risks. OCSC further recognizes that customers will always bear some financial risks of electric service. In instances like wholesale pricing risks and continuity of service, where customers continue to bear a portion of those risks, customers should be assured the greatest amount of transparency. The Commission's strawman proposal takes meaningful steps in expanding transparency into risks borne by customers.

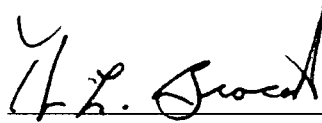
Grid reliability and the maintenance of critical customer services are also top priorities to OCSC. OCSC looks forward to the development of the numerous forthcoming proposals



addressing the winter storm and the direction of the Legislature and in assisting in the rulemaking process in any way it can. OCSC appreciates the opportunity to submit these Comments to the Commission.

Dated: July 6, 2021

Respectfully submitted,



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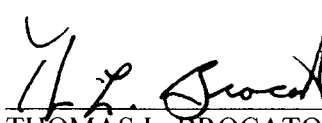
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ATTORNEYS FOR STEERING COMMITTEE OF  
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### **CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on July 6, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.



THOMAS L. BROCATO